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# Directive 09-3: Change of Filing Status

Issue: May spouses who have filed a valid joint return for a taxable year change their filing status to married filing separately?

Directive: Yes, but only before the due date of the original return, determined without regard to any extensions.

Discussion:

Under Massachusetts law, spouses may file separate returns or

may make a single return jointly of income taxes under chapter sixty-two, even though one of the spouses has neither income nor deductions, provided that their taxable years begin on the same day and either end on the same day or on different days solely because of the death of either or both. Such return shall be known as a joint return and shall include the income, exemptions and deductions of both spouses. Each spouse shall be jointly and severally liable for the entire tax.

G.L. c. 62C, § 6(a).

Couples who have already filed married filing separate returns for a given tax year may change filing status to married filing jointly after the due date of that return has passed. Couples having elected to file a joint return may not change their filing status and file separately after the due date has passed, provided the original joint return was valid, *i.e.*, complied with the requirements of G.L. c. 62C, § 6(a).<sup>[1]</sup> The due date of the return is to be determined without regard to any extensions.

The rules have their basis in the fact that since no return is legally required until its due date, a return filed before that date may be withdrawn and replaced; after the due date has passed, however, a validly filed joint return makes each “each spouse . . . jointly and severally liable for the *entire* tax.” See G.L. c. 62C, § 6(a), ¶ 4 (emphasis supplied). Once joint and several liability has been established, it may not generally be undone absent compelling circumstances. See *e.g.*, G.L. c. 62C, § 84 (“innocent spouse”).<sup>[2]</sup>

The Massachusetts rule concerning filling a joint return after separate returns is the same as that in IRC § 6013(b)(1), which states that “if an individual has filed a separate return for a taxable year for which a joint return could have been made by him and his spouse . . . and the time prescribed by law for filing the return for such taxable year has expired, such individual and his spouse may nevertheless make a joint return for such taxable year.” *Id.* The converse, once again is not

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allowed, as Treas. Reg. § 1-6013-1(a) provides that “[f]or any taxable year in which a joint return has been filed, separate returns shall not be made by the spouses after the time for the return of either has expired.” *Id.* A version of this federal regulation has been in continuous force since 1960, and its validity has been upheld by the courts. See, e.g., *McNeil v. United States*, 97-2 U.S. Tax Cas. (CCH), ¶50,698 (1997). This has been the Department’s long-standing policy.

/s/Navjeet K. Bal  
Navjeet K. Bal  
Commissioner of Revenue

NKB:MTF:lr

April 24, 2009

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[\[1\]](#)Couples on occasion jointly file returns even though they may not do so under the requirements of G.L. c. 62C, § 6(a). These returns are invalid, and must be replaced by valid separate returns. The filing of an invalid return does not constitute an “election” with respect to filing status.

Note that the ability to file a joint return may be affected by residency. A married couple may file a joint resident return only if both spouses are residents and may file a joint non-resident return only if both spouses are non-residents. Where the spouses are residents for a portion of the taxable year and non-residents for a portion of the same taxable year, a joint return may be filed provided that both spouses changed their status as residents or non-residents simultaneously. LR 83-31. See also 830 CMR 62.5A(11)(2)(Non-Resident Income Tax, “Returns”).

[\[2\]](#)This principle is also implicit in Form M-8379, *Nondebtor Spouse Claim and Allocation for Refund Due*, which may be filed by a taxpayer who filed a joint Massachusetts tax return and had an overpayment applied against the past due income tax debt of the debtor spouse. The form may not be filed if the joint refund has been (or will be) applied to past due tax *owed jointly to the Commonwealth*. See *Id.*